PLEADING — THEORY OF THE PLEADING. — The plaintiff in his complaint alleged that he and the defendant had made a contract of partnership, and demanded an accounting. The defendant in his answer denied the contract of partnership but admitted that he had contracted to employ the plaintiff. A referee was appointed and he found that there was no partnership but that there was a contract of employment. The court gave judgment for the plaintiff for breach of contract. *Held*, that since the complaint was framed as a bill in equity, and the judgment was in the nature of a judgment at law, the judgment should be reversed. *Jackson* v. *Strong*, 222 N. Y. 149.

For a discussion of the principles involved, see NOTES, page 166.

PUBLIC SERVICE COMPANIES — WHAT CONSTITUTES A PUBLIC USE. — A brewery generating its own electricity for light, heat, and power contracted to sell its surplus under the name of M. O. Danciger and Company to individuals within a radius of three blocks of the brewery. No use was made of the streets or highways; the consumers furnished their own poles and wires; paid for the construction, though the work was usually done by employees of the brewery. Rates were charged in a few instances on the meter basis, the meters belonging to the consumers, but in most instances the charge was governed by a flat rate. Having discontinued service without prior notice, and on refusal to reinstate service, a proceeding was brought before the Public Service Commission who ordered a reinstatement of the service. On appeal to the court, *held*, appeal sustained. *State ex rel. M. O. Danciger & Co.* v. *The Public Service Commission*, 205 S. W. 36 (Mo.) (1918).

For a discussion of the principles involved, see NOTES, page 169.

QUASI-CONTRACTS — RIGHTS ARISING UNDER MISTAKE OF FACT AS TO PRICE. — A corporation made an agreement with the owner of one-half its capital stock to buy him out on the basis of an inventory. The price was set at $13,000. It was then found that an item of $900 had been omitted from the liabilities in the inventory and a consequent overcharge of $450 to the corporation, which now sues to recover that amount. *Held*, the corporation cannot recover at law. *Borough Paper Co.* v. *Scher*, 170 N. Y. Supp. 395 (App. Div.).

The court suggests that the corporation should have gone into equity for reformation. The older decisions held that price like quality was not to be regarded as going to the essence of the contract. *Paulison* v. *Van Inderstine*, 28 N. J. Eq. 306; *Stettheimer* v. *Killip*, 75 N. Y. 282; *Okill* v. *Whittaker*, 1 DeG. & Sm. 83; *Segur* v. *Tingley*, 11 Conn. 134. But in the principal case the inventory was expressly made the basis of the sale and so became itself the subject matter of the contract. And for such cases equity allows rescission. *De Voin* v. *De Voin*, 76 Wis. 83, 44 N. W. 839. See 23 HARV. L. REV. 609–10, 614. Or equity might force the vendor to return the overcharge and let the sale stand. *Lawrence* v. *Staigg*, 8 R. I. 256; *Wirsching* v. *Grand Lodge of Masons*, 67 N. J. Eq. 711, 56 Atl. 713. Then if equity could give relief, an action at law should also lie, since money has been paid under an essential mistake of fact. The authorities, however, are in conflict as the parol evidence rule has been usually held to bar showing the mistake. See WOODWARD, QUASI-CONTRACTS, § 180, and notes; KEENER, QUASI-CONTRACTS, 123, 124. But here there is no difficulty on the parol evidence rule as the inventory was expressly made the basis of the contract price.

RAILROADS — LICENSE TO USE TRACKS — LIABILITY OF LICENSOR FOR NEGLIGENCE OF LICENSEE. — Under a statute authorizing railways to make joint running arrangements with any other railway, the defendant railway corporation allowed another railway to run trains over the licensor's tracks to fill a gap in the licensee's system. While using the defendant's tracks, the